UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 770

Case No. 835: SIDIBEH

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, Vice-President, presiding; Mr. Mikuin Leliel Balanda; Mr. Mayer Gabay;

Whereas, on 25 October 1993, 25 October and 19 December 1994, Lamin Sidibeh, a former staff member of the United Nations High Commissioner for Refugees (hereinafter referred to as UNHCR), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 21 January 1995, the Applicant, after making the necessary corrections, again filed an application requesting the Tribunal:

"...

(1) To reinstate me into UNHCR, due regard being given to my seniority, promotion and my right for rotation to a Category A or B duty station.

(2) To order the payment of compensation for my job related illness of arthritis which resulted in uveitis causing a permanent reduction in the vision of my left eye.

(3) ... that all entitlements due to me by way of financial benefits and allowances, from the date of the wrongful termination of my appointment to date, be paid to me.

(4) To administer some form of punishment on those staff members of UNHCR, Lagos office who made serious, malicious allegations against me, which were all found to be false ..."

Whereas, the Respondent filed his answer on 18 May 1995;

Whereas, the Applicant filed written observations on 21 June 1995;

Whereas, on 3 July 1996, the Application filed an additional statement;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNHCR, following a two-year term of service from 1978 to 1980 in the Regional Office of the United Nations Children's Fund in Nairobi, Kenya, on 1 April 1980, on a one-year intermediate term appointment at the L-2, step II level, as Associate Programme Officer. After serving successively in Somalia and Sudan, on 1 October 1987, he was appointed Head of the Sub-Office, Dire Dawa, Ethiopia. On 1 July 1988, the Applicant was granted an indefinite appointment at the P-4 level. From 1 November 1991, he was assigned to Nigeria as Chief of Mission in Lagos. On 12 August 1991, he was informed that he had been appointed as Head of Field Office, Garissa, Kenya. With effect from 6 October 1993, the Applicant was separated from service for abandonment of post.

In a memorandum dated 15 August 1991, to the High Commissioner for Refugees, the Applicant noted that his last appointment was to another hardship posting after twelve years of consecutive hardship postings. He suggested that perhaps he was being subjected to disciplinary action and stated: "I absolutely and honestly need a break from another hardship posting at this point in time".

Whereas, on 11 July 1996, the Tribunal ordered the production of the document requested by the Applicant, and put questions to the Respondent, to which he provided answers on 15 July 1996;

Whereas, on 19 July 1996, the Tribunal informed the Respondent that it could not accept the document with the condition attached, namely that it not be made available to the Applicant;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 1 June 1988, as a Public Information Officer in Jerusalem, on a one year fixed-term appointment at the P-3, step III level. His appointment was extended for one year, and subsequently for a further three year period. With effect from 1 July 1990, the Applicant was promoted to the P-4 level, as Senior External Relations Officer and transferred to UNRWA Headquarters. On 26 May 1991, the Applicant was temporarily assigned to UNRWA's Field Office in Gaza as a Refugee Affairs Officer. On 2 July 1991, he was assigned, in an acting capacity, to the post of Public Information Officer. With effect from 1 October 1991, the Applicant was formally transferred to this post. The Applicant separated from service on 29 May 1993, upon the expiration of his appointment.

In a letter dated 3 May 1991, the Director of Personnel confirmed "the Agency's decision to send you on temporary assignment to Gaza as a Refugee Affairs Officer". He informed the Applicant that "the temporary assignment shall be for an initial period of 4 months, but with the possibility of an extension". In a letter dated 12 June 1991, the Chief, Personnel Services Division, advised the Applicant that his assignment would be "for an initial period of one year".

On 1 December 1992, the Personnel Resources Committee met to consider the upcoming expiration of three staff appointments,

including the Applicant's, and the recommendation in all cases by the staff members' supervisors that the appointments be extended. According to the record of the meeting, "The Committee decided to defer a recommendation on [the Applicant] until a date some three months before the expiry of his present appointment". At a subsequent meeting, held on 5 February 1993, the Personnel Resources Committee noted that the Director of UNRWA Operations, Gaza, "has recommended [the Applicant's] extension but not in the occupied territory, where 'there have been some complaints about his public relations image.' (The Director adds: 'He is however doing a good job.') If he is to be extended, but not in the occupied territory, the only feasible option was considered by the Committee to be a rotation ..." The Committee asked the Director of Personnel "to explore such a rotation" and to report back.

A handwritten note on the Minutes of the Committee meeting states: "I have come to the conclusion that [the Applicant's] contract should not be renewed. Please advise him ..." On 12 February 1993, the Director of Personnel advised the Applicant that on account of "the stresses associated with living and working in Gaza, it is not considered desirable to extend service in that duty station for a further period". He noted the upcoming expiration of the Applicant's appointment and informed him that the Commissioner-General had "explored the possibility of an alternative posting for you" but that such possibilities "are so extremely limited that he has reluctantly come to the conclusion that an extension of your appointment beyond 29 May 1993 is not feasible".

In a letter dated 10 March 1993, the Applicant requested the Commissioner-General to review the decision not to extend his appointment, pointing out that he would "have completed five years' service with the Agency by 29 May 1993, without any adverse periodic reports. In these circumstances, I consider that I am entitled to expect a renewal of my contract". Referring to the

unavailability of an alternative posting, he confirmed that "I do not seek an alternative posting, and am happy to remain in Gaza if my contract is renewed".

In a reply dated 1 April 1993, the Commissioner-General informed the Applicant that "an exception to the duration of service [in Gaza] would not be in the best interest of the Agency, and that, unfortunately, a rotation of other personnel would equally not be in the interest of our operations. Noting that "the Agency has not acted in a way that could justify, on your part, a legitimate expectation that your contract would be renewed", the Commissioner-General confirmed his decision.

On 12 April 1993, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 25 February 1994. Its conclusions read, inter alia, as follows:

> "29. The Appellant claimed that the administrative decision to allow his fixed-term appointment to expire was an arbitrary one and was not based on a sound professional assessment of his work. The Board concurs with the Appellant that his work was satisfactory but nevertheless recognizes the fact that staff members of the Agency are subject to the sole authority of the Commissioner-General and consequently must come to the conclusion that the Respondent had every right to decide to let the Appellant's fixed-term contract expire on 29 May 1993.
>
> 30. The Board decides, therefore, to advise the Commissioner-General that, within the terms of the Letter of Appointment, the Agency Staff Regulations and Rules, it finds no basis for upholding the Appellant's appeal and accordingly recommends that the administrative decision to allow the Appellant's fixed-term appointment to expire on 29 May 1993 be upheld."

On 11 March 1994, the Commissioner-General transmitted to the Applicant a copy of the JAB report and informed him as follows:

> "... You will note that the Board has concluded that the Administration's decision to allow your fixed-term

appointment with the Agency to expire without renewal was lawful and proper and in compliance with your letter of appointment and the relevant regulations, rules and personnel directives. The Board, therefore, recommended that the Administration's decision be upheld and that your appeal be dismissed. I accept these conclusions and recommendations; your appeal is, therefore, dismissed.

..."

On 12 January 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant had no reason to believe his appointment would not be extended. He had a legitimate expectancy of further employment.

2. The Respondent failed to communicate the real reasons for the non-extension of the Applicant's appointment. The decision was unfounded and arbitrary and deprived the Applicant of due process.

Whereas the Respondent's principal contentions are:

1. The decision not to extend the Applicant's fixed-term contract was within the Respondent's discretion.

2. The Respondent's decision was a legitimate exercise of his discretion, which was made to ensure the proper functioning of the Agency.

The Tribunal, having deliberated from 10 July to 2 August 1996, now pronounces the following judgement:

I. At its meeting of 5 February 1993, the Personnel Resources Committee considered the recommendation of the Director of UNRWA Operations, Gaza, that the Applicant's appointment be extended,

but not in the occupied territory. The Director stated that there had been some complaints about the Applicant's public relations image but added "He is, however, doing a good job". The Committee's view was that, if the appointment was to be extended, but not in the occupied territory, the only feasible option was rotation.

The Committee requested an exploration of the rotation option suggested, but the Commissioner-General subsequently stated that he had come to the conclusion that the Applicant's contract should not be extended.

In a letter of 12 February 1993, the Applicant was informed by the Director of Personnel that, in accordance with the Agency's policy, which took into account the stresses associated with living and working in Gaza, it was not considered desirable to extend service in that duty station. He was told that the Commissioner-General had explored the possibility of an alternative posting, but the possibilities were so extremely limited that he had reluctantly come to the conclusion that an extension was not feasible.

II. The Applicant requested the Commissioner-General to review this decision, noting that he would be happy to remain in Gaza. In a reply of 1 April 1993, the Commissioner-General informed the Applicant that international staff members were expected to serve in Gaza normally for two years, a policy established because of the difficult situation in the Gaza strip, which took into account the interests of both the staff member and the Agency.

III. The Applicant makes a number of arguments in support of his case. In the main, he says that he would have completed a total of five years with the Agency by 29 May 1993; that his periodic reports had been good, that his two supervisors had told him that they had advised positively on his extension; that it was a

general policy of the United Nations system that in his situation an extension of five years could be expected; that, in early 1993, both the Director of Personnel and the Deputy Director of Personnel foresaw no problem with his extension; that the policy, in regard to staff members normally being expected to serve no more than two years in Gaza, was ignored and that officials, whom he lists, spent longer periods in Gaza; he also claims that rotation would have been feasible and that the question was not explored, that neither the Chief, Public Information Office, nor the Public Information Officer/West Bank had been consulted.

IV. The Respondent contends that the terms of the written rules and written policy did not give the Applicant any expectation of renewal, nor, indeed, is there evidence to show that the Respondent did anything to create such an expectation. The Respondent says that in the absence of any legitimate expectancy of renewal, the reasons for the Respondent's choosing not to offer the Applicant an extension of his contract are irrelevant, provided that the decision is exercised in a proper manner.

The Respondent refers to policy on International Staff Rotation to move such staff within two years. If the exigencies of the operations require that a staff member serve for longer at one duty station than is generally desirable, the current performance of the staff member concerned is a relevant factor.

The Respondent argues that the words of the Commissioner-General, written on the Committee's minutes "I have come to the conclusion ...", imply that the Commissioner-General considered the matter of rotation, that the brief time which elapsed does not mean that there was not due consideration, that speed was essential so that the Applicant could be informed as soon as possible of his non-extension, in order to enable him to seek alternative employment.

V. The Applicant did not have a right to renewal. The factors cited by the Applicant, namely encouragement by various superiors, his reasonably substantial period of service, his positive performance reports, the suggestion that the policy of staff members normally serving two years in Gaza was sometimes ignored, do not establish such a right.

The fact that the period which elapsed before the Commissioner-General gave his conclusion on rotation and non-renewal was short, does not, of itself, mean that due consideration was not given. The Commissioner-General furnishes what seems to be a reasonable explanation, namely to give the Applicant an opportunity to seek other employment.

VI. However, the Tribunal notes that there was a complaint, made by a journalist, regarding the Applicant, which may have played some part in the Commissioner-General's decision. The Applicant was initially informed of the journalist's complaint and asked to respond. It was, perhaps, the same matter which resurfaced in the Director's recommendation, which noted that there had been some complaints about the Applicant's public relations image. This recommendation was made on a routing slip, which, in effect, took on the characteristics of a performance report. The Applicant should have been allowed to respond to it in that context, i.e. the process in which his extension was being considered. Such an omission constitutes a procedural irregularity in that it represents a failure to afford the Applicant his right in this regard. For this, he is entitled to compensation.

VII. For the foregoing reasons, the Tribunal orders the Respondent to pay to the Applicant three months of his net base salary at the rate in effect on the date of his separation from service.

All other pleas are rejected, including the Applicant's request for costs.

(Signatures)

Hubert THIERRY
Vice-President, presiding

Mikuin Leliel BALANDA
Member

Francis SPAIN
Member

Geneva, 2 August 1996

R. Maria VICIEN-MILBURN
Executive Secretary

D. Rejects all other pleas.

(Signatures)

Hubert THIERRY
Vice-President, presiding

Mikuin Leliel BALANDA
Member

Mayer GABAY
Member

Geneva, 2 August 1996

R. Maria VICIEN-MILBURN
Executive Secretary